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13 UNITED STATES DISTRICT COURT
14 DISTRICT OF ARIZONA

15 _____)
16 Dorothy Isham; and) No.
17 George H. Isham; wife and husband,)
18 Plaintiffs,) COMPLAINT
19 v.)
20 National Enterprise Systems, Inc.,)
21 an Ohio corporation;)
22 Defendant.) (Jury Trial Demanded)
23 _____)
24
25 Plaintiffs allege as follows:

1 I. Preliminary Statement

2 1. Plaintiffs bring this action for damages based upon Defendant's
3 violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692
4 et seq. (hereinafter "FDCPA"), and for state law claims for
5 unreasonable debt collection and invasion of privacy. In the course of
6 attempting to collect a debt allegedly owed by Plaintiffs, Defendant
7 engaged in deceptive, unfair and abusive debt collection practices in

1 violation of the FDCPA, and took actions which constitute
2 unreasonable debt collection and invasion of privacy under the doctrine
3 enunciated in Fernandez v. United Acceptance Corporation, 610 P.2d
4 461 (Ariz. App. 1980). Plaintiffs seek to recover actual damages, and
5 statutory damages, punitive damages, as well as reasonable attorney's
6 fees and costs.

II. Statutory Structure of FDCPA

- 8 2. Congress passed the FDCPA to eliminate abusive debt collection
9 practices by debt collectors, to insure that those debt collectors who
10 refrain from using abusive debt collection practices are not
11 competitively disadvantaged, and to promote consistent state action to
12 protect consumers against debt collection abuses. FDCPA § 1692.

13 3. The FDCPA is designed to protect consumers who have been
14 victimized by unscrupulous debt collectors regardless of whether a
15 valid debt exists. Baker v. G.C. Services Corp., 677 F.2d 775, 777 (9th
16 Cir. 1982).

17 4. The FDCPA defines a “consumer” as any natural person obligated or
18 allegedly obligated to pay any debt. FDCPA § 1692a(3).

19 5. The FDCPA defines “debt” as any obligation or alleged obligation of a
20 consumer to pay money arising out of a transaction in which the
21 money, property, insurance, or services which are the subject or the
22 transaction are primarily for personal, family, or household purposes.
23 FDCPA § 1692a(5).

24 6. The FDCPA defines “debt collector’ as any person who uses any
25 instrumentality of interstate commerce or the mails in any business

the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another. FDCPA § 1692a(6).

III. Jurisdiction

10 8. Jurisdiction of this Court, over this action and the parties herein,
11 arises under 15 U.S.C. § 1692k(d) (FDCPA), and 28 U.S.C. §1337.
12 Venue lies in the Phoenix Division of the District of Arizona as
13 Plaintiff's claims arose from acts of the Defendant perpetrated therein.

IV. Parties

15 9. Plaintiffs are individuals and residents of Maricopa County, Arizona.

16 10. Plaintiffs are allegedly obligated to pay a consumer debt.

17 11. Plaintiffs are “consumers” as defined by FDCPA § 1692a(3).

18 12. Defendant National Enterprise Systems, Inc. (hereinafter “NES”) is an

19 Ohio corporation doing business within the State of Arizona.

20 13. NES is licensed by the Arizona Department of Financial Institutions

21 as a collection agency, license number 0903433.

22 14. NES regularly collects or attempts to collect debts owed or asserted to

23 be owed or due another.

24 15. NES regularly collects or attempts to collect debts which it has

25 purchased after default.

1 16. NES is a “debt collector” as defined by FDCPA § 1692a(6).

2 V. Factual Allegations

3 17. Several years prior, Plaintiff Dorothy Isham opened and used a credit
4 card issued by Bank of America.

5 18. Dorothy used the credit card for personal, family, and household
6 purposes.

7 19. In or about December 2006, someone other than Plaintiffs ordered a
8 new credit card on Dorothy’s account and used it for purchases totaling
9 \$15,000.

10 20. Upon receipt of the first billing statement from Bank of America,
11 Plaintiffs notified Bank of America of the unauthorized and illegal
12 charges made to her account.

13 21. Despite Plaintiffs’ repeated disputes to Bank of America, Bank of
14 America continued to attempt to collect the credit card balance from
15 Plaintiffs.

16 22. Plaintiffs also filed a police report with the Phoenix Police Department
17 concerning the illegal use of her credit card account.

18 23. Plaintiffs wrote Bank of America numerous times notifying it of the
19 dispute, giving it the Police Report number, and requesting that Bank
20 of America provide them with copies of all records associated with the
21 disputed and illegal charges made to her account.

22 24. Bank of America never provided Plaintiffs with any documentation
23 concerning the disputed and illegal charges made to the account, but
24 rather assigned the account to NES for collection purposes.

25 25. NES sent Plaintiffs a collection letter dated February 8, 2008

1 concerning the collection of the alleged Bank of America debt.

2 26. NES also began a campaign of harassing phone calls to Plaintiffs and
3 her family in an attempt to collect on the Bank of America account.

4 27. During these calls to Plaintiffs, NES through its collectors refused to
5 properly identify itself, falsely represented itself as "Bank of America,"
6 threatened Plaintiffs that they would go to jail, called Plaintiffs
7 derogatory and insulting names, yelled and screamed at Plaintiffs, and
8 otherwise harassed Plaintiffs.

9 28. During a call that Plaintiff George Isham answered, the NES collector
10 asked him whether he was a gambler, and then told him that "we
11 know you are guilty because you are breathing hard."

12 29. The NES collector also told George that his wife was a "shopaholic"
13 and a "credit card freak," and that he did not know her, implying that
14 Dorothy had incurred the debt behind his back, and that she was now
15 trying to get out of paying it.

16 30. The NES collector also rudely asked George "do you know what credit
17 cards your wife has?," again implying that Dorothy had incurred the
18 Bank of America debt behind her husband's back, and that she was
19 now trying to get out of paying it.

20 31. On February 25, 2008 at approximately 8:15 a.m., NES's collector,
21 Kathy Allen, telephoned Dorothy concerning the Bank of America
22 account.

23 32. When Dorothy asked her how to spell her last name, Allen hung up.

24 33. On that same day, at approximately 2:13 p.m., NES telephoned
25 Dorothy concerning the Bank of America account.

- 1 34. The NES collector refused to identify himself or give Dorothy a phone
- 2 number.
- 3 35. The NES collector told Dorothy to "Shut up! You shut up right now!"
- 4 and demanded that Dorothy "go get her check book" and give him a
- 5 check number.
- 6 36. The NES collector also rudely told Dorothy that he will see her in
- 7 court, and that she needed to grow up and pay her bills.
- 8 37. Again, on February 25, 2008 at approximately 2:37 p.m., NES
- 9 telephoned Dorothy for the third time that day concerning the Bank of
- 10 America account.
- 11 38. The collector refused to give Dorothy a name or phone number and
- 12 hung up.
- 13 39. On February 28, 2008 Dorothy received a call from a NES collector
- 14 threatening her that legal action would begin in March, and that she
- 15 needed to get an attorney.
- 16 40. On February 29, 2008, NES telephoned Dorothy at approximately 8:00
- 17 a.m., and woke her.
- 18 41. The NES collector was very rude and nasty to Dorothy.
- 19 42. Later on February 29, 2008, NES telephoned Dorothy numerous times
- 20 at her home when she had family and friends over for a weekly Bible
- 21 study.
- 22 43. During the first call, which came at approximately 11:00 a.m., the NES
- 23 collector was so rude and abusive to Dorothy that her daughter and
- 24 friends could see that she was physically upset from the conversation.
- 25 44. The second call on February 29, 2008 came at approximately 11:25

1 a.m.

2 45. This call was answered by Plaintiffs' daughter, Diane Vasquez.

3 46. The NES collector asked to speak with Dorothy, but Diane told him
4 that she was not feeling well, and asked what the call was about.

5 47. The NES collector told Diane that the call concerned a "legal matter"
6 and "a credit card that [Dorothy] owes on."

7 48. The NES collector also told Diane and threatened that "well, she is
8 going to feel a lot worse by the time this is over."

9 49. The NES collector then hung up.

10 50. The third call came a few minutes later at approximately 11:30 a.m.,
11 but the caller hung up immediately after it was answered.

12 51. At approximately 11:45 a.m., NES called a fourth time.

13 52. When the NES collector asked for Dorothy, Diane asked him whether
14 the call was about the credit card.

15 53. The NES collector said that it was, and asked Diane who she was.

16 54. While Diane started to explain that she was Plaintiffs' daughter, a
17 woman from NES got on the line and screamed "who is this?"

18 55. When Diane asked who she was, the NES collector hung up.

19 56. During the time these calls were coming in, Dorothy and her guests
20 could hear what was being said to Diane by the NES collectors.

21 57. Dorothy became so distraught and embarrassed, and humiliated, she
22 felt very ill and had to lay down.

23 58. NES also telephoned Plaintiffs four more times on February 29, 2008,
24 for a total of nine (9) calls.

25 59. The sixth call came at approximately 2:00 p.m., and the seventh at

1 2:23 p.m.

- 2 60. At approximately 2:25 p.m., the NES collector told Dorothy that she
3 was going to court and that she was going to prison because "this was a
4 felony."
- 5 61. At approximately 2:40 p.m., the NES collector told Dorothy that the
6 call was from Joshua James's office, implying that it was a lawyer's
7 office, and that they would be sending the file out for further
8 collections.
- 9 62. On March 1, 2008 at approximately 9:00 a.m., NES telephoned
10 Dorothy again concerning the Bank of America account.
- 11 63. The NES collector stated that the call was from the legal department
12 and that the case was going to court.
- 13 64. On March 3, 2008, NES called Dorothy again concerning the Bank of
14 America account.
- 15 65. The NES collector asked Dorothy if she had a lawyer, and stated that
16 he thought she had a lawyer.
- 17 66. NES's illegal actions caused Plaintiffs to believe that they were going
18 to be sued on the Bank of America debt.
- 19 67. NES's actions also caused Dorothy to believe that she might be
20 arrested and charged with a crime because she had failed to pay off the
21 Bank of America debt.
- 22 68. As a result of Defendant's outrageous actions as outlined above,
23 Plaintiffs have suffered damages including, but not limited to, extreme
24 emotional distress, embarrassment, humiliation, family strife and
25 conflict, anger, sleeplessness, upset stomach, headaches, inability to

1 concentrate, loss of enjoyment of life, and other severe emotional
2 distress.

3 69. Defendant's actions taken here were intentional, willful, and in gross
4 or reckless disregard of Plaintiffs' rights and part of its persistent and
5 routine practice of debt collection.

6 70. In the alternative, Defendant's actions were negligent.

7 VI. Causes of Action

8 a. Fair Debt Collection Practices Act

9 71. Plaintiffs repeat, reallege, and incorporate by reference the foregoing
10 paragraphs.

11 72. Defendant's violations of the FDCPA include, but are not necessarily
12 limited to, 15 U.S.C. §§ 1692c(a)(1), 1692c(b), 1692d, 1692d(2),
13 1692d(5), 1692d(6), 1692e, 1692e(3), 1692d(4), 1692e(5), 1692e(7), and
14 1692e(10).

15 73. As a direct result and proximate cause of Defendant's actions in
16 violation of the FDCPA, Plaintiffs have suffered actual damages.

17
18 b. Invasion of Privacy

19 74. Plaintiffs repeat, reallege, and incorporate by reference the foregoing
20 paragraphs.

21 75. Defendant's actions constitute unreasonable debt collection and an
22 invasion of Plaintiffs' privacy pursuant to the doctrine enunciated in
23 Fernandez v. United Acceptance Corporation, 610 P.2d 461 (Ariz. App.
24 1980).

25 76. As a direct result and proximate cause of Defendant's actions,

1 Plaintiffs have suffered actual damages for which Defendant is liable.

VII. Demand for Jury Trial

3 Plaintiffs hereby demand a jury trial on all issues so triable.

VIII. Prayer for Relief

5 WHEREFORE, Plaintiffs request that judgment be entered against
6 Defendant for:

- 7 a) Statutory damages of \$1,000 for each Plaintiff pursuant to
8 §1692k;

9 b) Actual damages in an amount to be determined by trial;

10 c) Punitive damages in an amount to be determined at trial;

11 d) Costs and reasonable attorney's fees pursuant to §1692k; and

12 e) Such other relief as may be just and proper.

14 DATED April 16, 2008 .

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